STATE PERSONNEL BOARD, STATE OF COLORADO
Case No. **2005B034**

INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

MILTON NEWBORN,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH CORRECTIONS, GILLIAM YOUTH SERVICE CENTER,

Respondent.

Administrative Law Judge Hollyce Farrell held the hearing in this matter on January 5, 2005, at the State Personnel Board, 1120 Lincoln, Second Floor Conference Room, Denver, Colorado. Assistant Attorney General Valerie Arnold represented Respondent. Respondent's advisory witness was Cornelius Foxworth, the appointing authority. Complainant appeared and was represented by Stefan Kazmierski, Esquire.

MATTER APPEALED

Complainant, Milton Newborn ("Complainant" or "Newborn"), appeals his termination by Respondent, Department of Human Services, Division of Youth Corrections, Gilliam Youth Service Center ("Respondent" or "DYC" or "Gilliam"). Complainant seeks reinstatement, back pay, interest and attorney fees and costs.

For the reasons set forth below, Respondent's action is **affirmed.**

ISSUES

1. Whether Complainant committed the acts for which he was disciplined;

2. Whether Respondent's action was arbitrary, capricious or contrary to rule or law;

3. Whether the discipline imposed was within the reasonable range of alternatives available to the appointing authority;

4. Whether Complainant is entitled to an award of attorney fees and costs.

FINDINGS OF FACT

General Background

1. Complainant had been employed by the State of Colorado since September 14, 1982, and was first certified in 1983.

2. Complainant was certified as a Correctional Security Services Officer I (CSSO I) for the Colorado Department of Human Services, Division of Youth Corrections, employed at the Gilliam Youth Services Center at the time of his termination. He held that position from September 2001 until the date of his termination, September 14, 2004.

3. Gilliam is a youth correctional facility which houses a maximum of 70 residents at one time. All residents are at Gilliam by court order and have a criminal past. Some of them have been sexually and/or physically abused.

4. Complainant primarily worked the "graveyard" shift at Gilliam (11:00 p.m. to 7:00 a.m.).

5. During the graveyard shift residents are asleep, for the most part, and not walking around the Gilliam facility.

6. If a resident in Complainant's pod wanted to get up for a drink of water or to use the restroom during Complainant's shift, the resident would have to knock on the door and wait for Complainant to open it. Once Complainant opened the door, the resident would not be able to see Complainant's computer screen, and would have no reason to go Complainant's computer terminal.

7. Complainant sometimes voluntarily worked shifts for other employees when requested, so was sometimes working while the residents were awake.

8. Computers are located throughout the Gilliam facility. The residents can easily view the screens on some of the computers.

9. At times, staff computers can be left unmanned if the staff member is responding to a call for assistance.

10. Complainant and other CSSO's are supposed to be role models for the youth residents. The influence of a positive role model can prevent a youth from going further into the correctional system.

11. Complainant received good performance evaluations and favorable commendations while working at Gilliam. Complainant was a well liked and an above average employee who was highly regarded at Gilliam.

12. Cornelius Foxworth is the Director at Gilliam and was Complainant's appointing authority at all times relevant to this appeal.

2003 Disciplinary Action

13. In May of 2003, Gilliam conducted a sweep of all of its employees' e-mail accounts. The sweep revealed that a number of employees had been sending or receiving inappropriate e-mails. As a result of the inappropriate e-mails the sweep revealed, about a dozen Gilliam employees had pre-disciplinary meetings pursuant to State Personnel Board Rule R-6-10.

14. Complainant was one of approximately 12 employees who had an R-6-10 meeting as a result of the May 2003 sweep. His R-6-10 meeting was held with Foxworth on June 26, 2003.

15. During that meeting, Foxworth advised Complainant that DYC's policy "states that things of a sexual nature will not be sent." Foxworth also told Complainant, "And when you forward it on, you continue a process. Do you understand that part?' Complainant responded, "I understand it now, yes."

16. Later in the May 2003 disciplinary meeting, Foxworth asked Complainant, "Do you understand that according to policy anything of a sexual nature is not to be transmitted; and the fact that if it is sent to you, it is to be deleted?"

17. Complainant received a disciplinary action on July 18, 2003, for forwarding inappropriate e-mails that were of a violent, racial and/or sexual nature.

18. In the disciplinary action letter Foxworth wrote to Complainant on July 18, 2003, Foxworth included the following:

> 1. As part of the investigation, your e-mail habits were reviewed. A sampling of approximately sixteen e-mails were reviewed by the Director . . . . This sampling contained content that could be construed as violent, racial and/or of a sexual nature. These e-mails were not only received internally and externally, but they were forwarded on to Gilliam Youth Services Employees as well as others outside this building.
> 2. You received training at New Hire Orientation and from the Division of Youth Corrections Academy in which you received a certification of reviews for Sexual Harassment, Ownership and Use of State Assets and Code of Ethics, and Use of E-mail.
> 3. Quite a few e-mails that you have sent and received have been of a racial, violent, and/or sexual nature. You were given a clear choice on whether to delete e-mails sent to you or to forward them on. You choose to forward this type of information knowing that it was against

several policies. It was a conscience choice. You have stated that you send adult material to other adults. This a Juvenile facility and at no time can you assure that anyone other than the intended receiver did not have the ability to view the material. This action did not promote mutual respect or display the professionalism required within Gilliam Youth Services Center, the Division of Youth Corrections, and the Colorado Department of Human Services.

19. In the July 18, 2003, disciplinary action letter, Foxworth advised Complainant that Complainant had violated DYC policies 3.7 Code of Ethics, 22.1 Use of Electronic E-mail, 22.4 Internet/Intranet Access, Colorado Department of Human Service policies VI 2.14 Electronic Communications and Colorado Code of Regulations R-1-12. Foxworth imposed a $1,000 pay deduction as Complainant's discipline.

20. Complainant did not appeal his July 18, 2003 disciplinary action.

E-mail and Internet Policies and Employee Use

21. Department of Human Services Policy VI 2.14 provides, in pertinent part, the following:

Prohibited Communications:
Electronic media cannot be used for knowingly transmitting, retrieving, or storing any communication that is:

- Discriminatory or harassing
- Derogatory to any individual or group
- Obscene and/or pornographic
- Defamatory or threatening
- For any purpose that is illegal or contrary to CDHS and/or the state's policy or business interests

Personal Use:
Employees are expected to demonstrate a sense of responsibility in their uses of telephonic and electronic resources. While it is recognized that some personal uses occur, inappropriate or excessive personal uses, as determined by the appointing authority, are prohibited under this policy. Any uses that are identified as "prohibited communications" are specifically prohibited and subject to corrective or disciplinary action.

22. DYC Policy 22.4 provides, in pertinent part, the following:

D. Prohibited Practices:

1. Using the internet/intranet for personal/non work-related business.

2. Accessing, transmitting, storing, displaying or requesting obscene, pornographic, erotic, profane, racist, sexist, or other offensive material. This includes messages, images, video, or sound that violates the state's harassment policies or creates an intimidating or hostile work environment.
3. . . . .
4. Sending inappropriate E-Mail messages over the internet/intranet.

23. DYC Policy 22.1 provides, in pertinent part, the following:

> The Division of Youth Corrections supports the use of electronic mail (E-mail) as an effective tool in the performance of our job duties. With this in mind, it is important that E-mail users conduct themselves in a professional manner when utilizing the E-mail system. All E-mail communications and associated attachments transmitted from, received by or stored on any equipment owned by the Department of Human Services, Division of Youth Corrections, are considered state property and must be used for business related communications and not for the benefit of any other organization or individual. This policy applies to E-mail transmitted through all local, regional, or global computer networks.
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> ….
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> C. Forwarding Messages:
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> . . . .
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> Should you receive an E-mail message that is inappropriate, do not forward it.
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> F. Prohibited Practices:
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> The use of inappropriate, unsuitable, or otherwise foul language.
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> G. Investigating Complaints on the E-Mail System:
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> . . . .
>
> Employees who continue to inappropriately use the E-mail system or engage in the prohibited practices listed above, may have their

access permanently revoked and may face corrective and/or disciplinary action up to and including termination.

24. State Personnel Board Rule R-1-12 provides, "It is the duty of state employees to protect and conserve state property. No employee shall use state time, property, equipment, or supplies for private use or any other purpose not in the interests of the State of Colorado."

25. Complainant received training on the above quoted policies at New Hire Orientation.

26. Complainant could have reviewed the policies at any time on his state computer.

27. Department of Human Services policy VI 2.14 contradicts DYC policies 22.4 and 22.1 in that DHS policy VI 2.14 allows for the personal use of electronic communication as long as it is used responsibly while DYC policy 22.4 provides that the use of the Internet for personal business is prohibited and DYC policy 22.1 provides that e-mail must be used only for business-related communications.

28. In reviewing employees' personal e-mails and Internet use, Foxworth considers the possibility of the material being accessed by an unintended recipient. He also considers whether the material would be damaging to the residents or facility if an unintended recipient accessed it.

29. Foxworth expects employees to use common sense in sending personal e-mails by considering the environment and culture in which they work.

30. Gilliam employees' e-mail can be monitored by its IT staff or by the appointing authority.

31. Almost all of Gilliam's employees use the Internet for personal use, to some degree, while at work.

32. Almost all of Gilliam's employees send and receive personal e-mails from their state computers.

Subsequent E-mail Sweeps

33. In August of 2003, Gilliam did another e-mail sweep. At that time, none of the Gilliam employees were found to be sending inappropriate e-mails. Any personal e-mail messages were in the nature of communication.

34. In June of 2004, Gilliam did another e-mail sweep. Every employee, including Foxworth, had his or her e-mail account reviewed. During that sweep, it was discovered that Complainant was again in violation of DYC's policies regarding e-mail.

35. It was discovered that one other employee was using the Internet excessively on non-work-related sites. This individual spent many hours on the Internet for personal use. The sites that individual was viewing were not violent, racial, and/or sexual in nature. That employee was disciplined, but was not terminated.

36. When Foxworth learned that Complainant was again sending inappropriate e-mails, he was shocked because he had talked to Complainant about the issue before, and he did not think Complainant would repeat the behavior.

37. Foxworth conducted another R-6-10 meeting with Complainant on August 11, 2004. Prior to the meeting, Foxworth conducted an investigation into Complainant's e-mail habits. Foxworth discovered that Complainant had sent or forwarded a number of e-mails that were obscene and/or pornographic, derogatory to an individual or group, or defamatory material. Examples of the e-mails sent or forwarded include the following:

- A photograph of a man wearing a wine box costume with a woman with her mouth on the spout of the box. The spout is in the man's genital area.
- A photograph of a woman with her skirt pulled up so it exposes her buttocks as she is about to sit on a toilet which is the statue or sculpture of a seated naked man.
- A text message entitled "Dictionary for Women's Personal Ads." Sample definitions in that message include:
    - Adventurous . . . . . Slept with everyone
    - Athletic . . . . . No tits
    - Friendship first. . . . . Former slut
    - Feminist . . . . . Fat
    - Professional . . . . . Bitch
- A photograph of a man who appears to be dead under the wheel of large automobile or truck. A subsequent photograph of the man after the wheel has been removed from his chest. It appears that blood is coming from the man's mouth and nose. The title of this e-mail is "Squished."
- A text message entitled "Babies." That message is a joke where a mother explains to her daughter (following the daughter's description of oral sex) that is how women get jewelry, rather than babies.
- A text message entitled Akmed the Arab. That message is a joke which concludes that the Middle East smells like human waste.
- A text message entitled "This is for my people." That message is a joke where a black man pushes a white man off of a cliff.
- A photograph entitled "Redneck Doorbell." The doorbell on the home in the photograph is an animal's anus.
- A photograph of an obese person with a wine bottle stuck in his or her navel. The person's shirt is raised to expose the person's bare stomach and thighs. This e-mail is entitled "A new bottle opener."

38. During the R-6-10 meeting, Complainant acknowledged to Foxworth that the e-mails in question were "pretty similar" to the e-mails Complainant had when he was disciplined in 2003.

39. Complainant forwarded the e-mails containing pictures to friends outside of the state system and the text messages to other employees at DYC, as well as friends outside of the state system. DYC records show that Complainant forwarded the "Squished" e-mail and the "new bottle opener" e-mail to DYC employees.

40. The individual who was found to have excessive Internet use during the 2004 e-mail sweep also forwarded the "Squished" e-mail to others. That individual did not forward any other inappropriate e-mails.

41. Complainant testified, and told Mr. Foxworth during the R-6-10 meeting, that he thought he was not violating any rules or policies because he was sending the photographic e-mails outside of the state system. Moreover, he explained, the messages he sent within the state system were text messages, not photographs. Complainant testified that he thought it was permissible to send inappropriate photographic e-mails outside of the state system and inappropriate text messages even within the state system. Complainant testified that he thought Foxworth's concern was that Gilliam residents might see inappropriate photographs on computer screens.

42. None of the recipients of Complainant's e-mails had complained to DYC or Complainant about the inappropriate e-mails Complainant forwarded.

43. Complainant was put on notice by his May 2003 disciplinary action as to what constituted inappropriate e-mail. During the 2003 R-6-10 meeting, Foxworth told Complainant that according to DYC policy "things of a sexual nature will not be sent." During that same meeting, Fox worth asked Complainant, "Do you understand that according to policy anything of sexual nature is not to be transmitted, and the fact that if it is sent to you, it is to be deleted?"

44. At no time during the 2003 R-6-10 meeting or in the 2003 disciplinary letter did Foxworth tell Complainant that it was permissible to send inappropriate e-mails outside of the state system. At no time during the 2003 R-6-10 meeting did Foxworth tell Complainant that it was permissible to send inappropriate e-mails as long as they were in text form to those inside the state system.

45. During the 2003 R-6-10 meeting, Foxworth did ask Complainant, "Can you guarantee that no one, other than the people you sent it to, were able to review those e-mails; for an example, if someone has it open, if someone else comes in to apply, someone is looking over their shoulder, they happen to leave it up, can you guarantee that no one else has seen or was offended by those e-mails that you sent?"

46. In the 2003 disciplinary letter, Foxworth wrote, "This is a Juvenile facility and at no time can you assure that anyone other than the intended receiver did not have the ability to view the material."

47. It is not credible that the statements made by Foxworth concerning someone looking over another's shoulder and seeing an inappropriate e-mail and the statement in the 2003 disciplinary letter concerning anyone other than the intended receiver having the ability to view the e-mails led Complainant to believe that Foxworth was only concerned with picture e-mails being sent within the facility and state system.

48. Foxworth's statements to Complainant in both the 2003 R-6-10 meeting and the 2003 disciplinary letter clearly communicated to Complainant that no inappropriate e-mails, regardless of form or recipient, were to be transmitted.

49. Following the 2004 R-6-10 meeting, Foxworth reviewed Complainant's personnel file and Complainant's e-mails found in the 2004 sweep. Foxworth also considered Complainant's PACE's, his performance, his length of service and the type of employee Complainant was.

50. After considering the information gathered in the 2004 R-6-10 meeting, and the other information listed in the previous paragraph, as well as the relevant policies and procedures, Foxworth concluded that Complainant understood DYC's policies and procedures regarding e-mail use, and had willfully violated those policies and procedures.

51. Foxworth also considered the fact that Complainant worked in a Youth Services Center, and that some of the residents were capable of hacking into the computers, and that if a resident saw the inappropriate e-mails, the resident could be negatively impacted by knowing that a staff member condoned such jokes.

52. After considering discipline less than termination, including suspension, Foxworth terminated Complainant. Given the fact that Complainant had already been warned about sending inappropriate e-mails, Foxworth did not think suspension would be effective.

53. Several of Complainant's witnesses testified that they believed it was permissible after the 2003 mail sweep and subsequent disciplinary actions to send inappropriate text e-mails to people within the state system and inappropriate photographic e-mails to those outside the state system. That testimony lacked credibility, as those individuals were not found to be sending inappropriate e-mails after the 2003 sweep.

54. Other employees testified that after the 2003 sweep, Foxworth made it very clear that employees were not to send e-mails that were offensive, and if an employee received such e-mails, they were to be deleted.

55. Regardless of what other employees thought, Complainant was specifically told in his 2003 disciplinary action what constituted inappropriate e-mails, and that he could not send inappropriate e-mails.

56. Complainant timely appealed his termination.

DISCUSSION

I. GENERAL

Certified state employees have a property interest in their positions and may only be disciplined for just cause. Colo. Const. Art. 12, §§ 13-15; §§ 24-50-101, et seq., C.R.S.; *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). Such cause is outlined in State Personnel Board Rules R-6-9, 4 CCR 801 and generally includes:

(1) failure to comply with standards of efficient service or competence;
(2) willful misconduct including either a violation of the State Personnel Board's rules or of the rules of the agency of employment;
(3) willful failure or inability to perform duties assigned; and
(4) final conviction of a felony or any other offense involving moral turpitude.

A. Burden of Proof

In this *de novo* disciplinary proceeding, the agency has the burden to prove by preponderant evidence that the acts or omissions on which the discipline was based occurred and that just cause warranted the discipline imposed. *Department of Institutions v. Kinchen*, 886 P.2d 700 (Colo. 1994). The Board may reverse Respondent's decision if the action is found arbitrary, capricious or contrary to rule or law. Section 24-50-103(6), C.R.S.

II. HEARING ISSUES

A. Complainant did commit the acts for which he was disciplined.

Respondent met its burden of proof. Complainant was disciplined for violating various DYC policies, 3.7 Code of Ethics, 22.1 Use of Electronic E-mail, 22.4 Internet/Intranet Access, Colorado Department of Human Services policies VI 2.14 Electronic Communications and Colorado Code of Regulation R-1-12. The credible evidence supports the conclusion that Complainant sent inappropriate e-mails after receiving his disciplinary action in 2003. By sending those e-mails, Complainant was in violation of DYC's policies on internet/intranet access and e-mail, DHS policy VI 2.14 and State Personnel Board Rule R-1-12.

B. The Appointing Authority's action was not arbitrary, capricious, or contrary to rule or law.

In determining whether an agency's decision is arbitrary or capricious, a court must determine whether the agency has 1) neglected or refused to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; 2) failed to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; 3) exercised its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions. *Lawley v. Department of Higher Education,* 36 P.3d 1239, 1252 (Colo. 2001).

The credible evidence establishes that Complainant was disciplined in May of 2003 for sending inappropriate e-mails. When Complainant received that disciplinary action, he was told not to transmit any e-mails that were of a violent, racial or sexual nature, and was to delete those e-mails if he received them. Complainant was also advised in his 2003 disciplinary action letter that he had sent or received several e-mails which were of a racial, violent and/or sexual nature, and that by forwarding those e-mails, Complainant was in violation of several policies. Complainant was informed, in writing, which policies he had violated. He had access to the policies and could have reviewed them at any time. In spite of receiving such notice, Complainant transmitted more e-mails that were racial, violent and/or sexual in nature.

Complainant argues that the rules are not clear because DHS Policy VI 2.14 recognizes that employees use the agency's electronic resources for personal uses while DYC Policy 22.4 prohibits the use of the internet/intranet for personal/non work-related business and DYC Policy 22.1 mandates that all e-mail be for business–related communications. While there is a conflict between those policies regarding personal use, they are all clear that transmitting inappropriate or offensive information is prohibited. DHS Rule VI 2.14 specifically states that its electronic media cannot be used for knowingly transmitting any communication that is "discriminatory or harassing, derogatory to any individual or group, obscene and/or pornographic, defamatory or threatening, for any purpose that is illegal or contrary to CDHS and/or the state's policy or business interests." DYC Policy 22.4 prohibits DYC employees from "accessing, transmitting, storing, displaying or requesting obscene, pornographic, erotic, profane, racist, sexist or other offensive material." DYC Policy 22.1 prohibits the use of language in e-mails that is "inappropriate, unsuitable, or otherwise foul." Moreover, DYC Policy 22.1 provides, "Should you receive an E-mail message that is inappropriate, do not forward it." Thus, the rules are not contradictory as to what may be transmitted.

Complainant further argues that he never received a clear directive regarding inappropriate e-mails. The credible evidence is contrary to that argument. Foxworth made it clear during the 2003 R-6-10 meeting that communications of a sexual nature were prohibited. Moreover, Foxworth made it clear that if Complainant received

anything of a sexual nature, it was not to be transmitted, and should be deleted. Foxworth further put Complainant on notice that forwarding e-mails of "a racial, violent, and/or sexual nature" was prohibited. Complainant was clearly put on notice as to what communications were impermissible.

The credible evidence further establishes that Foxworth appropriately weighed the mitigating and aggravating factors in reaching his decision to terminate Complainant. Complainant had already been disciplined for sending inappropriate e-mails, and was, therefore, aware of the policies prohibiting him from sending inappropriate e-mails. Complainant admitted that the e-mails he sent after his 2003 disciplinary action were similar to those he had sent prior to that disciplinary action. The credible evidence demonstrates that Foxworth, as the appointing authority, pursued his decision thoughtfully and thoroughly reviewed all of the evidence, including the information presented by Complainant before reaching his decision to terminate Complainant. Board Rule R-6-6, 4 CCR 801. The discipline imposed against Complainant was within the range of reasonable alternatives.

Finally, there is no credible evidence of like instances in which an employee was treated differently. The other employee who was disciplined after the 2004 e-mail sweep was not sending e-mails of a sexual nature. The only inappropriate e-mail that individual sent was the "Squished" e-mail. Foxworth's primary concern with that individual was the amount of personal time spent on the Internet, not the nature of his communications.

C. Attorney fees are not warranted in this action.

Attorney fees are warranted if an action was instituted frivolously, in bad faith, maliciously, or as a means of harassment or was otherwise groundless. § 24-50-125.5, C.R.S., and Board Rule R-8-38, 4 CCR 801. The party seeking an award of attorney fees and costs shall bear the burden of proof as to whether the personnel action is frivolous, in bad faith, malicious, harassing, or otherwise groundless. Board Rule R-8-38(B), 4 CCR 801.

Complainant requested an award of attorney fees and costs. Because he did not prevail in this matter, there is no basis for such an award.

CONCLUSIONS OF LAW

1. Complainant committed the acts for which he was disciplined.

2. Respondent's action was not arbitrary, capricious, or contrary to rule or law.

3. The discipline imposed was within the range of reasonable alternatives.

4. Attorney fees are not warranted.

ORDER

Respondent's action is **affirmed**. Complainant's appeal is dismissed with prejudice. Attorney fees and costs are not awarded.

Dated this ___ day of _____, 2005.

Hollyce Farrell
Administrative Law Judge
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-764-1472

NOTICE OF APPEAL RIGHTS

EACH PARTY HAS THE FOLLOWING RIGHTS

1. To abide by the decision of the Administrative Law Judge ("ALJ").

2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is mailed to the parties. Section 24-4-105(15), C.R.S. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is mailed to the parties. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990); Sections 24-4-105(14) and (15), C.R.S.; Rule R-8-58, 4 Code of Colo. Reg. 801. If the Board does not receive a written notice of appeal within thirty calendar days of the mailing date of the decision of the ALJ, then the decision of the ALJ automatically becomes final. Vendetti v. University of Southern Colorado, 793 P.2d 657 (Colo. App. 1990).

PETITION FOR RECONSIDERATION

A petition for reconsideration of the decision of the ALJ may be filed within 5 calendar days after receipt of the decision of the ALJ. The petition for reconsideration must allege an oversight or misapprehension by the ALJ. The filing of a petition for reconsideration does not extend the thirty-calendar day deadline, described above, for filing a notice of appeal of the decision of the ALJ.

RECORD ON APPEAL

The party appealing the decision of the ALJ must pay the cost to prepare the record on appeal. The fee to prepare the record on appeal is **$50.00** (exclusive of any transcription cost). Payment of the preparation fee may be made either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 45 days of the date of the designation of record. For additional information contact the State Personnel Board office at (303) 894-2136.

BRIEFS ON APPEAL

The opening brief of the appellant must be filed with the Board and mailed to the appellee within twenty calendar days after the date the Certificate of Record of Hearing Proceedings is mailed to the parties by the Board. The answer brief of the appellee must be filed with the Board and mailed to the appellant within 10 calendar days after the appellee receives the appellant's opening brief. An original and 7 copies of each brief must be filed with the Board. A brief cannot exceed 10 pages in length unless the Board orders otherwise. Briefs must be double-spaced and on 8 □ inch by 11-inch paper only. Rule R-8-64, 4 CCR 801.

ORAL ARGUMENT ON APPEAL

A request for oral argument must be filed with the Board on or before the date a party's brief is due. Rule R-8-66, 4 CCR 801. Requests for oral argument are seldom granted.

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of _____, 2005, I placed true copies of the foregoing **INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE and NOTICE OF APPEAL RIGHTS** in the United States mail, postage prepaid, addressed as follows:

Stefan Kazmierski, Esquire
1120 Lincoln Street, Suite 1607
Denver, CO 80203-2141

and in the interagency mail, to:

Valerie Arnold
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Andrea C. Woods